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Supreme Court of the United States

No. 393.

GYNTHER STORAASLI,

Appellant,

vs.

STATE OF MINNESOTA,

Appellee.

BRIEF FOR THE APPELLEE, STATE OF MINNESOTA,

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INDEX.

Page.

Statement of Additional Facts and of Questions raised.. 1

Argument 3

I. The law does not attempt to impose a property tax on appellant's motor vehicle..... 3

II. The law does not discriminate arbitrarily between residents and non-residents..... 7

III: If the law discriminates in favor of residents such discrimination is justified..... 10

IV. The law does not arbitrarily discriminate between persons located at Fort Snelling and other non-residents 12

V. Conclusion 14

CASES CITED.

Page.

Bekins Van Lines vs. Riley, 280 U. S. 80..... 7
Blake vs. McClung, 172 U. S. 239..... 10
Canadian National Railway Co. vs. Eggen, 252 U. S. 553. 8
Carley & Hamilton vs. Snook, 281 U. S. 66..... 7
Clark vs. Poor, 274 U. S. 554..... 7
Crandall vs. Nevada, 73 U. S. 35..... 11
Denver vs. New York Trust Co., 229 U. S. 123..... 14
Farmers Loan & Trust Co. vs. Minnesota, 280 U. S. 204.. 13
First National Bank vs. Albright, 208 U. S. 548..... 14
Geer vs. Connecticut, 161 U. S. 519..... 10
Gillespie vs. State of Oklahoma, 257 U. S. 501..... 14
Hendrick vs. Maryland, 235 U. S. 610.....7, 11, 12, 13
Hess vs. Pawloski, 274 U. S. 352, 353.....7, 9
Interstate Busses Corp. vs. Blodgett, 276 U. S. 245.....7, 9
Kane vs. New Jersey, 242 U. S. 160.....7, 11, 13
Ludlow-Saylor Wire Company vs. Woolbrinck, 275 Mo. 339 8
Maxwell vs. Bugbee, 250 U. S. 525..... 8
McReady vs. Virginia, 94 U. S. 391..... 10
Morris vs. Duby, 274 U. S. 135..... 7
Opinion of the Justices (Mass.), 250 Mass. 591..... 5
Patsone vs. Penn., 232 U. S. 138..... 10
People vs. Crane, 214 N. Y. 154..... 10
Raymond vs. Holm, 165 Minn. 215..... 6
Solberg vs. Davenport (Iowa), 232 N. W. 477..... 11
State ex rel. Bolens vs. Frear, 148 Wis. 456..... 8
State vs. Oligney, 162 Minn. 302..... 6
State vs. Peterson, 159 Minn. 269..... 6
State vs. Storaasli, 180 Minn. 241..... 6

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BRIEF FOR THE APPELLEE, STATE OF MINNESOTA.

STATEMENT OF ADDITIONAL FACTS AND OF QUESTIONS RAISED.

There are certain facts of which this court may take judicial notice, that should be noted.

Fort Snelling Reservation is a small military district. The map shows that its greatest length from north to south is 3¾ miles. Its greatest width at any one point from east to west is 2 miles. It is entirely within the territory of the state of Minnesota so that every time appellant drives his automobile off the reservation he passes over the highways of the state. It is immediately adjacent to the city limits of Minneapolis and St. Paul, the two largest cities of the state. These facts are of importance in considering the questions of alleged discrimination raised by appellant.

It should also be called to the court's attention at the outset that the Minnesota motor vehicle tax law contains very

liberal provisions with reference to the use of the highways of the state by non-residents. A non-resident who has registered his motor vehicle in accordance with the laws of the state or country in which he lives may operate it on the highways of the state of Minnesota for a period of three months in each calendar year without any charge whatever, merely by filing a registration certificate with the registrar of motor vehicles. He may operate his car for a period of ten days without even that formality (*Mason's Minnesota Statutes of 1927*, Section 2684). Residents of the states immediately adjoining Minnesota, and of those adjoining Canadian provinces, are granted liberal provisions on a reciprocity basis for the use of our highways during the entire year. The only charge is $1.00 (*Mason's Statutes*, Section 2684-1).

Appellant does not allege of what state he is a resident. The circumstance that he is stationed at Fort Snelling with the military forces does not affect his residence or citizenship. He does not allege that he has registered his motor vehicle in accordance with the laws of the state of his residence. He is not attempting to avoid double taxation. He asserts the right to use the highways of all the states without paying anything for that privilege in any of them.

Appellant does not base his claim upon any alleged violation of the commerce clause of the United States Constitution; neither does he claim that the law in question abridges the privileges or immunities of citizens of the United States, contrary to the Fourteenth Amendment. His answer does not even set forth that he is a citizen of the United States. His claims are that the law is an attempt to tax his motor vehicle as personal property contrary to the due process clause of the Fourteenth Amendment and that the Minnesota Statute denies to him the equal protection of the laws because of the claimed discrimination between him and resi-

dents of the state of Minnesota, and between him and residents of other states.

ARGUMENT.

I.

The Law Does Not Attempt to Impose a Property Tax on Appellant's Motor Vehicle.

Appellant's first claim is that the Minnesota motor vehicle tax is purely a property tax, and that as the state has no jurisdiction to tax personal property of a non-resident stationed at Fort Snelling the tax cannot be exacted from him without violation of the due process clause of the Fourteenth Amendment. Unless the tax in question is purely a property tax this claim is without merit.

The state concedes that it has no jurisdiction to tax personal property of a non-resident the situs of which is at the military reservation. It is also conceded that this court is not bound by the classification of the tax adopted by the state court or by the name given to it by that court, but is interested solely in its essential nature and incidents. With that in mind we wish to briefly analyze the Minnesota motor vehicle tax law.

It has been called a property tax, a combined property and privilege tax, and a privilege tax. It is a privilege tax because under article 16, section 3 of the Minnesota constitution it is imposed upon motor vehicles "using the public streets and highways of this state." No vehicle may be operated upon the highways without paying the tax. It is exacted of residents and non-residents alike, except as non-residents may be exempted by the provisions hereinbefore referred to. Since a property tax could not be imposed on

the vehicles of non-residents temporarily using the highways of the state it is clear that the legislature must have intended the tax to be a privilege tax. So did the framers of the constitution, for by the amendment it is provided: "any such law may, in the discretion of the legislature, provide for the exemption from taxation of any motor vehicle owned by a non-resident of the state, and constantly or temporarily using the streets and highways of the state." Since a property tax could not be imposed upon such vehicles the constitution clearly intended a privilege tax. The proceeds of the tax, by the express provisions of the same section of the constitution, go entirely into the state trunk highway fund to be used for the improvement of highways.

From all these aspects the tax is one imposed upon the privilege of using the highways of the state, levied to compensate the state for the special highway facilities which it has provided at great expense.

The tax is also said to be a property tax. In what respect? Appellant contends that it is a property tax because it is measured by the value of the vehicle, graduated according to age by a system of depreciation. He contends that this system of measurement is invalid as applied to a privilege tax and that the tax must, therefore, be considered to be a property tax. His statement as to the method of measuring the tax is not entirely correct. The classification is in part based on the weight of the vehicle. This is particularly true as to trucks (*Mason's Statutes, 1927*, § 2674). With regard to buses and other carriers of passengers for hire the tax is based in part upon the carrying capacity. With regard to motorcycles the tax is imposed at a flat rate regardless of value or weight.

However, regardless of these facts, we deny appellant's conclusion that a tax on the privilege of operating a motor

vehicle upon the highways may not be based on the value of the vehicle. The Massachusetts court in "*Opinions of the Justices,*" 250 Mass. 591, recognizes value as a proper basis for measuring a privilege tax of this kind, saying:

> "So far as value is an element in the ascertainment of the excise it may perhaps rest upon the inference that the greater the value of a motor vehicle, the greater may be its weight and the more severe the wear caused to the highways by its use thereof."

We think a better ground upon which to place such a conclusion is this: The state may measure a privilege tax, such as this, upon the basis of the damage to the highway, or upon the basis of the saving to the owner by reason of the improved facilities provided—in other words, upon the basis of the value of the privilege to the owner of the motor vehicle. It is common knowledge that a motor vehicle depreciates in value more rapidly when operated on a poor road than on a good road. Assume that over poor roads the rate of depreciation in value is 25% per year and over paved or improved roads is 15% per year. The saving to the owner by reason of the improvement of the highways is in exact proportion to the value of the vehicle. A $5,000.00 car will depreciate $1,250.00 in one year if operated upon poor roads and $750.00 if operated upon good roads, making a saving of $500.00. A $1,000.00 car will depreciate $250.00 if used on poor roads and $150.00 if used on improved roads, a saving of $100.00. A privilege tax for the use of improved highways measured upon the basis of the value of the car is therefore, based on the value of the privilege. There is nothing in the method of measuring the tax which is inconsistent with the nature of a privilege tax.

It is next suggested that it is a property tax because it is

in lieu of all other taxes upon the motor vehicle, or as the Minnesota court has said in its decision of this case below:

> "It is a property tax in the sense that it exempts the vehicle licensed from other taxation as property."

A non-resident of Minnesota has no right under the United States constitution to insist that motor vehicles of residents of the state of Minnesota be taxed in any particular way, or be taxed at all. If this particular tax is imposed equally on residents and non-residents the fact that no other form of tax is imposed upon the motor vehicles of residents of the state will not be regarded as important in this court. It is a matter with which a non-resident of the state has no concern. For that reason, regardless of the effect of such exemption provision upon the classification of the tax so far as the state's system of taxation is concerned, it has no weight or significance when considering the essential nature of the tax as impairing the rights of non-residents under the United States constitution.

The change in view of the Minnesota court from considering this tax only as a property tax (*State vs. Peterson*, 159 Minn. 269) to a mixed property and privilege tax (*Raymond vs. Holm*, 165 Minn. 215), (*State vs. Oligney*, 162 Minn. 302) and to a privilege tax accompanied with an exemption of the vehicle licensed from other taxation (*State vs. Storaasli*, 180 Minn. 241) is significant.

So far as this court is concerned, in considering the effect of the tax on the constitutional rights of non-residents, we believe it may be defined as a privilege tax, imposed upon the right to operate motor vehicles upon the public highways of the state, to compensate the state for the special facilities furnished, accompanied by an exemption of the vehicle from other taxation in the state. The tax is applied equally to

residents and non-residents. So is the exemption provision.

Such a privilege tax can be imposed upon the use of the highways by the appellant in this case.

Hendrick vs. Maryland, 235 U. S. 610.
Kane vs. New Jersey, 242 U. S. 160.
Morris vs. Duby, 274 U. S. 135.
Hess vs. Pawloski, 274 U. S. 352.
Clark vs. Poor, 274 U. S. 554.
Interstate Busses Corporation vs. Blodgett, 276 U. S. 245.
Bekins Van Lines vs. Riley, 280 U. S. 80.
Carley & Hamilton vs. Snook, 281 U. S. 66.

II.

The Law Does Not Discriminate Arbitrarily Between Residents and Non-Residents.

Appellant's next claim is that even if the tax is enforceable against him as a privilege tax the law is discriminatory as between non-residents and residents of the state. He says that when he pays on a certain make of car $20.00 as a privilege tax a resident with the same make of car pays the same amount in discharge both of a privilege tax and a property tax; that this denies to him and other non-residents coming within the jurisidiction of the state the equal protection of the law.

Substantially, this claim comes to an assertion that because a resident, upon paying the privilege tax in question, is exempted from further taxation of his motor vehicle, there is discrimination. The law, however, operates equally. The non-resident, upon paying the tax is also exempted from all other taxation upon the vehicle. He may keep it within the

state as long as he desires without it becoming subject to any property tax. He may use it over all the highways of the state free from any local privilege tax or exaction. Exemption from other taxes is granted to all. The mere fact that the exemption may be of more value to one taxpayer than another is immaterial.

If this be not true, many of the state income tax laws are unconstitutional. They frequently allow taxpayers to offset against their income tax the amount of the tax paid by them upon personal or real property under the general property tax laws of the state. The Wisconsin law considered in *State vs. Frear*, 148 Wis. 456, permitted the offset of personal property taxes. The Missouri law considered in *Ludlow-Saylor Wire Company vs. Wollbrinck*, 275 Mo. 339, permitted the offset of both personal and real property taxes. Could it be argued that a non-resident of the state could complain because, since he had no real or personal property subject to taxation in the state, and therefore as to him the exemption was of little value, there was discrimination in the operation of the income tax law?

Such inequalities, if they exist, do not arise by reason of any arbitrary distinctions made in the law. They are merely such as exist under any tax law because of the different situation of different taxpayers.

There is a still further reason why appellant's claim is unsound. The Fourteenth Amendment does not prevent the separate treatment of residents and non-residents where there is a substantial reason for different treatment.

Canadian National Railway Co. vs. Eggen, 252 U. S. 553.

Different provisions as to residents and non-residents may be inserted in tax laws.

Maxwell vs. Bugbee, 250 U. S. 525.

They may be differently treated in motor vehicle tax and regulatory laws.

Hess vs. Pawloski, 274 U. S. 352.

Even if, as to residents, the Minnesota motor vehicle tax is considered to be wholly a property tax, and as to non-residents, is considered to be wholly a privilege tax, there would not necessarily be discrimination. The total amount of the tax is the same in both cases. Neither residents nor non-residents can use the highways without paying these taxes. The money from both taxes goes into the state highway fund and is used solely in the improvement of the highways. The difference of treatment arises solely because of the inherent difference between residents and non-residents.

On this point the case of *Interstate Busses Corporation vs. Blodgett*, 276 U. S. 245, is important. There the claim was of discrimination in the Connecticut tax laws between interstate and intrastate carriers by motor bus. Interstate carriers were taxed by the usual registration law and in addition were required to pay a privilege tax of one cent per mile. Intrastate carriers paid the same registration tax and paid a tax measured by their gross earnings. Upon payment of this gross earnings tax they were entitled to certain deductions from other taxes and an exemption from the state income tax. They were not required to pay the one cent per mile tax required of interstate carriers. This court held that there was not shown to be any such discrimination as was prohibited by the Fourteenth Amendment; that the mere fact that the two classes were taxed under different statutes, imposing the tax in different forms, was immaterial.

III.

If the Law Discriminates in Favor of Residents Such Discrimination Is Justified.

If it can be said that the motor vehicle tax discriminates against non-residents there would be no violation of constitutional rights. The right of a state to discriminate between residents and non-residents in the distribution or enjoyment of the state owned resources is sanctioned by decisions of this court and by long continued practice. The leading case is *McReady vs. Virginia*, 94 U. S. 391, upholding a Virginia statute which forbade a person not a citizen of the state to take or plant oysters in certain rivers of the state. A state may restrict to its own citizens the enjoyment of its game.

Geer vs. Connecticut, 161 U. S. 519.

Patsone vs. Pennsylvania, 232 U. S. 138.

It may discriminate between residents and non-residents in the distribution of its public land or the use of its public forests. The principle that justifies these discriminations is that the common property of the state belongs to the people of the state, and hence, in any distribution of that property, the citizen may be preferred. The state may discriminate between its citizens or residents and aliens or non-residents in employment on public works. *People vs. Crane*, 214 N. Y. 154. The general doctrine is discussed in *Blake vs. McClung*, 172 U. S. 239.

The state of Minnesota has provided at an enormous expense to its citizens a system of improved highways. The money for this comes from many different sources. Besides the motor vehicle tax in question here, there is a gasoline excise tax; a state tax of one mill for highway aid purposes

(*Mason's Statutes, 1927*, § 2559); separate levies for road and bridge purposes by counties (*Mason's Statutes, 1927*, § 2565) and by towns (*Mason's Statutes, 1927*, § 2060). In addition to that the cities and villages of the state spend large sums on their streets. By the expenditure of vast sums of money over a long period of years our present system of highways has been provided. The highways belong to the people of the state. They were paid for by them.

There is no sound reason why the state may not discriminate in favor of its residents in the use of these highways by motor vehicles.

The right to operate motor vehicles over highways is not in a class with the fundamental right of citizens of the United States, such as the right to engage in business for a livelihood or to resort to the courts for redress of wrongs. It is a special privilege.

Solberg vs. Davenport (Iowa), 232 N. W. 477.

This court has recognized in *Hendrick vs. Maryland* that the movement of motor vehicles over the highways "is * * * abnormally destructive to the ways themselves." Stating the purpose of such taxes the court said further: "A further evident purpose was to secure some compensation for the use of facilities provided at great cost from the class for whose need they are essential *and whose operations over them are peculiarly injurious.*" In *Kane vs. New Jersey, supra*, the court referred to the right of the state "to exact reasonable compensation for special facilities afforded."

Such "an abnormally destructive" use of "special facilities" "provided at great cost" is not demandable as of right. It is different from the right of ingress or egress considered by the court in *Crandall vs. Nevada*, 73 U. S. 35.

Since the highways were provided by the people of the state at great expense to themselves a non-resident has no just cause for complaint if a reasonable privilege tax is exacted from him for their use, even if a similar tax were not exacted from residents.

IV.

The Law Does Not Arbitrarily Discriminate Between Persons Located at Fort Snelling and Other Non-Residents.

Appellant's next claim of alleged discrimination is that persons living at Fort Snelling are treated differently from residents of the other states. He refers to *Hendrick vs. Maryland* as authority on this point. The court in that case merely refused to decide the point raised as to claimed discrimination against residents of the District of Columbia.

The state contends that there is no discrimination against persons living at Fort Snelling in favor of residents of the other states; that even if there is a differenec in treatment it is justified by substantial difference in the situation of persons living at the Fort and residents of other states not located there.

As pointed out in the court below this appellant did not become a resident or a citizen of the military reservation by being stationed there. If a non-resident of Minnesota, he is a resident and citizen of some other state or country. As such, like other residents of such states or countries, he is entitled to use the highways of Minnesota without charge if his vehicle has been registered in the state or country of his residence as provided by its laws.

If this position be unsound there is ample justification for different treatment of persons located at Fort Snelling. It

may be assumed that there is vastly greater use of the Minnesota highways by them, compared with persons living in other states. The physical facts with reference to the size of the reservation and its location, as pointed out in the statement of facts herein, would justify such a discrimination.

Another reason for a difference in treatment would arise because of the reciprocal nature of the exemption privileges granted to non-residents in the use of Minnesota highways. One basis for these exemptions and privileges is that residents of other states and countries have presumably provided highway systems in their own states at great expense to them, which highways are used by residents of Minnesota. In order that residents of Minnesota may be granted the right to use such highways temporarily without tax, Minnesota extends the temporary use of its highways to residents of such states. Such reciprocal exemptions have been favorably mentioned by this court in several cases.

Hendrick vs. Maryland, supra.

Kane vs. New Jersey, supra.

Farmers Loan & Trust Co. vs. Minnesota, 280 U. S. 204.

Residents of these states may be granted special privileges to use the Minnesota highways because they have special privileges to exchange therefor.

Such a distinction is not unconstitutional unless all reciprocity provisions in state laws are unconstitutional.

V.

CONCLUSION.

In conclusion, we wish again to call attention to the essential fairness of the Minnesota motor vehicle tax law as a whole as applied to non-residents. The equal protection clause is directed only against arbitrary discrimination.

Denver vs. New York Trust Co., 229 U. S. 123.

As this court has said: "Accidental inequality is one thing; systematic discrimination is another."

First National Bank vs. Albright, 208 U. S. 548.

There is no evidence in the Minnesota law of any systematic arbitrary discrimination against any person. The rule of reason is applicable to all these constitutional provisions. As stated by this court with reference to the commerce clause: "The criterion of interference by the states with interstate commerce is one of degree. It is well understood that a certain amount of reaction upon and interference with such commerce can not be avoided if the states are to exist and make laws."

Gillespie vs. State of Oklahoma, 257 U. S. 501.

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